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12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF WASHINGTON

14 BRUCE GOODELL, a single person,

15 Plaintiff,

16 v.

17 COLUMBIA COUNTY PUBLIC
18 TRANSPORTATION; COLUMBIA
19 COUNTY TRANSPORTATION
20 AUTHORITY; and DAVID
21 OCAMPO,

22 Defendants.
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No. 2:20-cv-00226-SAB

**27 RESPONSE TO PLAINTIFF'S
28 MOTION FOR PARTIAL
29 SUMMARY JUDGMENT AND
30 DEFENDANTS' CROSS-
31 MOTION FOR SUMMARY
32 JUDGMENT**

Hearing Date:
January 29, 2021 at 10:00 am
With Oral Argument

27 Defendants Columbia County Public Transportation, Columbia County
28 Transportation Authority, and David Ocampo (collectively "Defendants"),
29 hereby submit this Response to Plaintiff Bruce Goodell's Motion for Partial
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1 Summary Judgment regarding Plaintiff's Washington Law Against
2 Discrimination, Chapter 46.90 RCW ("WLAD") retaliation claim. As there are
3 no genuine issues of material fact regarding liability, Defendants also move
4 this Court for an Order of Summary Judgment dismissing Plaintiff's WLAD
5 retaliation claim. This Motion is made pursuant to Fed. R. Civ. P. 56, LCivR
6 56, and based upon the following Memorandum of Law.

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11 As further articulated below, Plaintiff's Motion must be denied and
12 Defendants' Cross-Motion granted as:

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14 (1) Plaintiff's WLAD retaliation claim is not subject to strict liability
15 as an internal employment investigation invokes the "opposition
16 clause" of the retaliation provision and must be supported by the
17 employee's "reasonable belief" discrimination occurred. *See e.g.,*
18 *Vasconcelos v. Meese*, 907 F.2d 111, 113 (9th Cir. 1990). As such,
19 if an employee fabricates an internal complaint of discrimination,
20 the employee's termination is not "because he or she has opposed
21 any practices forbidden by this chapter." RCW 49.60.210(1).
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28 (2) Plaintiff cannot establish a *prima facie* case of retaliation as his
29 internal complaint of discrimination was fabricated, and therefore
30 not supported by a "reasonable belief" that discrimination occurred
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1 nor “because” he opposed discrimination. *See id.*

- 2 (3) The discharge of an employee for fabricating an internal complaint
3 of discrimination, lying during the investigation, and violating
4 employer policy constitutes a legitimate, nondiscriminatory motive.
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6 *Mackey v. Home Depot USA, Inc.*, 12 Wn. App. 2d 557, 580, 459
7 P.3d 371. *review denied* 195 Wn.2d 1031, 468 P.3d 616 (2020).
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11 **UNDISPUTED MATERIAL FACTS**

12 Defendants incorporate their Statements of Fact in Support of Cross-
13 Motion for Summary Judgment (“D-SOF”) as if fully restated herein. Plaintiff
14 Bruce Goodell was terminated from his employment with Defendant Columbia
15 County Public Transportation (“CCPT”) on December 11, 2019. (D-SOF 4.)
16 Mr. Goodell was terminated as the result of fabricating a complaint of
17 discrimination, lying during the internal investigation, and violating
18 Defendants’ employment policies. (See D-SOFs 3-11.)
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24 On November 10, 2019, Mr. Goodell emailed Defendant Ocampo an
25 internal complaint alleging that “on 10/30/19 and continuing,” Mr. Goodell
26 was “subjected to significant abuse by [co-worker] Mark Haney.” (D-SOF 5.)
27 Following this email, Defendant David Ocampo (“Ocampo”) conducted a
28 detailed investigation and interviewed Mr. Goodell at-least twice, along with
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1 interviewing the alleged harasser (Mr. Haney) and two other alleged witnesses
 2 (Ms. Suchodolski and Ms. Schmidt). (D-SOF 7.)
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4 None of the witnesses interviewed corroborated Mr. Goodell's story. (D-
 5 SOFs 8 and 9.) Two witnesses, Ms. Suchodolski and Ms. Schmidt, whose
 6 credibility has not been challenged, directly contradicted Mr. Goodell's
 7 assertion of acts he claimed they witnessed. (*Id.*) Ms. Suchodolski denied
 8 witnessing or overhearing any derogatory statements by Mr. Haney towards
 9 Mr. Goodell. (*Id.*) Ms. Schmidt denied observing Mr. Goodell get visibly
 10 upset, speak in a trembling voice, or get tearful. (*Id.*) When confronted with
 11 this contradicting testimony, Mr. Goodell changed his story or refused to
 12 respond. (*Id.*) Accordingly, Defendants found that Mr. Goodell falsified his
 13 testimony and that his complaint was not made in good faith. (*Id.*) As such,
 14 CCPT terminated Mr. Goodell for violating company policy. (D-SOF 11.)
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23 **STANDARD OF REVIEW**

24 The purpose of summary judgment is to avoid unnecessary trials.
 25 *Northwest Motorcycle Ass'n v. U.S. Dept. of Agriculture*, 18 F.3d 1468, 1471
 26 (9th Cir. 1994). Summary judgment is warranted if the moving party
 27 demonstrates "that there is no genuine dispute as to any material fact and that
 28 the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).
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1 The Court must construe the facts, as well as all rational inferences, in the light
 2 most favorable to the non-moving party. *Scott v. Harris*, 550 U.S. 372, 378
 3 (2007). However, the Court “defers to neither party in resolving purely legal
 4 questions.” *Trizuto v. Bellevue Police Dep’t*, 983 F. Supp. 2d 1277, 1288
 5 (W.D. Wash. 2013).
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9 MEMORANDUM OF LAW

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 11 The WLAD retaliation provision, RCW 49.60.210(1), provides:

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 13 It is an unfair practice for any employer . . . to discharge, expel, or
 14 otherwise discriminate against any person because he or she has
 15 opposed any practices forbidden by this chapter, or *because he or*
 16 *she has filed a charge, testified, or assisted in any proceeding*
 17 *under this chapter*.

18 (emphasis added). This provision contains an “opposition clause” (underlined)
 19 and a “participation clause” (italicized). *Lodis v. Corbis Holdings, Inc.*, 172
 20 Wn. App. 835, 848, 292 P.3d 779 (2013).
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22
 23 Courts apply the *McDonnell Douglas*¹ burden-shifting approach for
 24 purposes of a WLAD retaliation claim. *Erickson v. Biogen, Inc.*, 417 F. Supp.
 25 3d 1369, 1378 (W.D. Wash. 2019). Under the *McDonnell Douglas* burden-
 26 shifting approach:
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31 ¹ *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).
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1 Plaintiff must first establish a *prima facie* case of discrimination or
 2 retaliation. . . . If she [or he] succeeds, then the burden shifts to the
 3 Defendant to offer a legitimate explanation for Plaintiff's
 4 termination. . . . If Defendant does, the burden shifts back to the
 5 Plaintiff to show that Defendant's explanation is pretext for
 6 discrimination or retaliation.

7 *Erickson*, 417 F. Supp. 3d at 1378 (internal citations omitted).

8 In order to establish a *prima facie* case of a WLAD retaliation claim, "an
 9 employee must show that (1) he or she engaged in a statutorily protected
 10 activity, (2) the employer took an adverse employment action against the
 11 activity, (2) the employer took an adverse employment action against the
 12 employee, and (3) there is a causal connection between the employee's activity
 13 and the employer's adverse action." *Mackey v. Home Depot USA, Inc.*, 12 Wn.
 14 App. 2d 557, 574, 459 P.3d 371 (2020).

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 18 **A. The WLAD Does Not Protect Fabricated Internal Complaints of**
 19 **Discrimination as a Matter of Law.**
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21 Mr. Goodell argues "[t]he only dispute related to this claim is the purely
 22 legal questions of whether the WLAD permits an employer to fire an employee
 23 for making allegedly false statements while engaged in protected activity."
 24 (ECF No. 38 at 2.) In essence, Mr. Goodell advocates for a strict liability
 25 standard for a WLAD retaliation claim. (*See id.* at 9 ("all retaliation against
 26 those who oppose discrimination or participate in a proceeding regarding
 27 discrimination is prohibited, irrespective of whether the information provided
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1 was truthful”). Plaintiff’s position is contrary to various aspects of the law,
 2 including plain language of the WLAD and the *McDonnell Douglas* burden-
 3 shifting approach, along with public policy.
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 6 **i. The “Because” Language Contained in the WLAD**
 7 **Retaliation Provision Imposes a Causation Requirement.**
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9 The plain language of the statute indicates that the retaliation provision
 10 does not impose strict liability as the “because” language requires causation.
 11 RCW 49.60.210(1). Under the plain language of the retaliation provision, it is
 12 unlawful to discharge an employee “because he or she has opposed any
 13 practices forbidden by this chapter” or “because he or she has filed a charge,
 14 testified, or assisted in any proceeding under this chapter.” *Id.*
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18 Although the provisions of the WLAD must be liberally construed, the
 19 Court must not read language into a statute that the legislature did not intend to
 20 include. *Davis v. Fred's Appliance, Inc.*, 171 Wn. App. 348, 360, 287 P.3d 51
 21 (2012). The express “because” language of RCW 49.60.210(1) invokes a
 22 causation requirement and negates a strict liability interpretation. *See Gross v.*
 23 *FBL Fin. Servs., Inc.*, 557 U.S. 167, 176-77 (2009); *accord Murray v. Mayo*
 24 *Clinic*, 934 F.3d 1101, 1107 (9th Cir. 2019). The termination of an employee
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1 for lying is not “because” of a protected activity; it is because the employee
 2 lied. RCW 49.60.210(1).
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4 Plaintiff convolutes this issue by citing language in RCW 49.60.210(3) and
 5 arguing that “a legislature is presumed to act intentionally and purposely when
 6 it includes language in one section but omits it in another.” (ECF No. 38 at 6.)
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 8 Specifically, RCW 49.60.210(3) provides:
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11 It is an unfair practice for any employer . . . to discharge, expel,
 12 discriminate, or otherwise retaliate against an individual assisting
 13 with an office of fraud and accountability investigation under RCW
 14 74.04.012, unless the individual has willfully disregarded the truth
 15 in providing information to the office.

16 (Underlining added). However, subsection (3) was added in 2011 as part of a
 17 revision to Chapter 74.04 RCW, whereas, the WLAD retaliation provision
 18 itself was promulgated in 1949. *See* 2011 Wash. Legis. Serv. 1st Sp. Sess. Ch.
 19 42 (S.S.B. 5921). Further, Plaintiff fails to recognize that RCW 49.60.210(1),
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 21 the operative subsection of the WLAD retaliation provision, does not include
 22 the phrase “retaliate,” although subsection (3) expressly does. Certainly,
 23 Plaintiff is not prepared to argue that retaliation is not covered by subsection
 24 (1) since it is not expressly referenced therein as it is in subsection (3). *See*
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 26 *State v. Alvarado*, 164 Wn.2d 556, 562, 192 P.3d 345 (2008) (“Common sense
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 28 informs our analysis, as we avoid absurd results in statutory interpretation.”).
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1 Mr. Goodell's statutory interpretation arguments contain logical fallacies
 2 and are contrary to the "because" plain language of RCW 49.60.210(1). As
 3 such, WLAD retaliation does not impose the strict liability standard advocated
 4 by Mr. Goodell. *See* RCW 49.60.210(1).
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 7 **ii. The *McDonnell Douglas* Burden-Shifting Approach**
 8 **Requires Causation to Establish Retaliation.**
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10 The *McDonnell Douglas* burden-shifting framework requires a plaintiff to
 11 establish "a causal connection between the employee's activity and the
 12 employer's adverse action." *Mackey*, 12 Wn. App. 2d at 574. Similar to the
 13 argument contained *supra*, if the WLAD retaliation provision applied strict
 14 liability, there would not be a well-developed body of case law that the
 15 *McDonnell Douglas* burden-shifting approach applies to WLAD retaliation
 16 claims. *Mackey*, 12 Wn. App. 2d at 574; *Erickson*, 417 F. Supp. 3d at 1378.
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22 **iii. An Employer May Discharge an Employee For an Internal**
 23 **Employment Complaint Not Made with a Reasonable Belief**
 24 **That Discrimination Occurred.**
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26 Mr. Goodell's internal complaint of discrimination is governed by the
 27 "opposition clause" to the retaliation provision, as opposed to the "participation
 28 clause." *See Reiber v. City of Pullman*, 2013 WL 3984442, at *9
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(unpublished)² (E.D. Wash. 2013). In addition to causation requirements, Mr. Goodell must have had a “reasonable belief” in the veracity of the claim to invoke the protections of the retaliation “opposition clause” protections. *See Lodi*, 192 Wn. App. at 50.

As the WLAD mirrors federal law, this Court may look to Title VII of the Civil Rights Act of 1964 as a source of guidance when analyzing WLAD retaliation claims. *Stegall v. Citadel Broad. Co.*, 350 F.3d 1061, 1065 (9th Cir. 2003). Plaintiff argues that “[t]he majority of circuit courts, including the Ninth Circuit, hold that Title VII shields an employee from adverse action on the basis of any opposition to discrimination or testimony provided in an EEO proceeding, regardless of its truth.” (ECF No. 38 at 7.) However, the referenced federal authority relates to investigations by a regulatory entity, which invokes the “participation clause,” not the “opposition clause.” *See e.g., Egei v. Johnson*, 192 F. Supp. 3d 81, 86-87 (D.D.C. 2016) (“[plaintiff’s] retaliation claim is brought under the ‘participation’ clause, because the statements that FEMA alleges were false or malicious were made in her formal EEO charge and her testimony before the EEO.”)

² Pursuant to LCivR 7(g)(2), this authority and other unpublished opinions herein are offered for persuasive purposes only.

Under WLAD, the “opposition clause” prevents an employer from discharging an employee “because he or she has opposed any practices forbidden by this chapter.” RCW 49.60.210(1). On the other hand, the “participation clause” prevents an employer from discharging an employee “because he or she has filed a charge, testified, or assisted in any proceeding under this chapter.” *Id.* (underlining added). Although Plaintiff claims that his retaliation claim invokes both clauses, the WLAD “participation clause” is “limited to official investigations” and does not extend to “an employer’s internal investigation.” *Reiber*, 2013 WL 3984442, at *9. In coming to this conclusion, the *Reiber* Court reasoned that under the comparable language of Title VII: “A purely internal investigation does not involve a ‘charge,’ or testimony, and neither is it a ‘proceeding’ or a ‘hearing.’” *Reiber*, 2013 WL 3984442, at *9 (quoting *Hatmaker v. Mem’l Med. Ctr.*, 619 F.3d 741, 746-47 (7th Cir. 2010)). Furthermore, RCW 49.60.210(1) likewise explicitly refers to a “charge” and “proceeding under this chapter,” which excludes an internal investigation. As such, Mr. Goodell’s internal complaint and the following internal investigation falls under the “opposition clause.” *See id.*

Under the WLAD “opposition clause,” an employee is entitled to protection only if he “‘reasonably believed’” that he was opposing unlawful

1 discrimination. *Lodis*, 192 Wn. App. at 50. As it pertains to an internal
 2 employer discrimination or harassment investigation, the Ninth Circuit and
 3 multiple other Circuits have expressly held that the “opposition clause” as
 4 opposed to the “participation clause” applies. *Vasconcelos v. Meese*, 907 F.2d
 5 111, 113 (9th Cir. 1990) (employee “was fired for lying during the [internal
 6 employer] investigation, not for lying in any *EEOC* investigation”); *E.E.O.C. v.*
 7 *Total Sys. Servs., Inc.*, 221 F.3d 1171, 1175 (11th Cir. 2000) (“Even if false
 8 statements made in the context of an EEOC charge (per the participation clause)
 9 are protected and cannot be grounds for dismissal or discipline, . . . this
 10 extreme level of protection for untruth is not afforded to false statements made
 11 under the opposition clause.”); *Townsend v. Benjamin Enterprises, Inc.*, 679
 12 F.3d 41, 49 (2d Cir. 2012) (“Every Court of Appeals to have considered this
 13 issue squarely has held that participation in an internal employer investigation
 14 not connected with a formal EEOC proceeding does not qualify as protected
 15 activity under the participation clause.”); *Hatmaker*, 619 F.3d at 747.

16 The “opposition clause” (as opposed to the “participation clause”) applies
 17 to an internal employer investigation so the employer may rely on the
 18 truthfulness of employee statements to make personnel, legal, or other
 19 important business decisions. *See Total Sys. Servs.*, 221 F.3d at 1176. On the
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1 other hand, official investigations conducted by a third-party governmental
2 agency invoke further protections, as the employee has gone to the
3 governmental agency regarding allegations of discrimination. *See id.* Such
4 actions subject an employer to an official proceeding, a potential agency
5 investigation, and the possibility of legal liability. Moreover, official
6 governmental agency proceedings have mechanisms to prevent fabricated
7 claims (such as perjury), where an internal employment complaint does not. As
8 such, “[a]ccusations made in the context of charges before [the official
9 government agency] are protected by statute, charges made outside of that
10 context are made at the accuser’s peril.” *Vasconcelos*, 907 F.2d at 113.

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12 The cases cited by Plaintiff in support of his argument clearly deal with a
13 “participation clause” retaliation situation as the employees therein had initiated
14 an official administrative proceeding. *See Sias v. City Demonstration Agency*,
15 588 F.2d 692, 695 (9th Cir. 1978) (“It is well settled that the participation
16 clause shields an employee from retaliation regardless of the merit of his EEOC
17 charge.”); *see also Egei*, 192 F. Supp. 3d at 86-87; *accord Pettway v. Am. Cast*
18 *Iron Pipe Co.*, 411 F.2d 998, 999–1000 (5th Cir. 1969) (framing the issue as
19 “whether a charge filed pursuant to § 704(a) of the Act (42 U.S.C.A. § 2000e-
20 3(a)) prohibits an employer from discharging an employee for having made

1 false statements in a request for reconsideration of his case before the Equal
2 Employment Opportunity Commission”).
3

4 Based upon the foregoing, the “opposition clause” is applicable to Mr.
5 Goodell’s internal complaint regarding discrimination. *See Vasconcelos*, 907
6 F.2d at 113. Therefore, as Mr. Goodell did not have a “reasonable belief” in
7 the internal complaint as it was fabricated, he is not protected as a matter of
8 law. *See Lodis*, 192 Wn. App. at 50. At the very least, the WLAD retaliation
9 provision does not invoke strict liability. *See id.*
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14 **iv. Public Policy Allows an Employer to Terminate an**
15 **Employee Who Was Dishonest During an Internal**
16 **Investigation.**
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18 Public policy supports the conclusion that a fabricated internal claim of
19 discrimination should not insulate an employee from discharge. An employer is
20 entitled to rely upon statements of an employee during an internal investigation
21 to make important business decisions. *See Total Sys. Servs.*, 221 F.3d at 1176.
22 The standard under the “opposition clause” does not prevent an employee from
23 making an internal complaint, but only requires a “reasonable basis.” *See id.*
24 In the event a fabricated complaint was protected, an inept employee could
25 insulate himself from termination by simply making baseless accusations. *See*
26 *Mattson v. Caterpillar, Inc.*, 359 F.3d 885, 891 (7th Cir. 2004).
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B. Plaintiff Cannot Establish a *Prima Facie* Retaliation Case as a Matter of Law.

Based upon the foregoing, Mr. Goodell is only protected under the “opposition clause” if he “reasonably believed” that he was opposing unlawful discrimination. *Lodis*, 192 Wn. App. at 50. In order to establish a *prima facie* case of retaliation, Mr. Goodell must establish that: (1) “he . . . engaged in a statutorily protected activity, (2) the employer took an adverse employment action against [him], and (3) there is a causal connection.” *Mackey*, 12 Wn. App. 2d at 574. The casual connection requires that “statutorily protected activity was a ‘substantial factor’ in Defendant’s adverse employment decision.” *Erickson*, 417 F. Supp. 3d at 1383.

In the situation at hand, Mr. Goodell did not engage in a protected activity under the “opposition clause.” *See Villa v. CavaMezze Grill, LLC*, 858 F.3d 896, 901 (4th Cir. 2017) (“The opposition clause does not protect the making of a knowingly false allegation.”). Mr. Goodell did not have a reasonable belief that he was opposing an unlawful practice as Defendants, after conducting an investigation, “determined that the allegations against Mr. Haney in [Mr. Goodell’s] complaint . . . are false.” (D-SOF 8.) Additionally, even if the Court finds protected activity, Mr. Goodell cannot establish that the

1 protected activity was a “substantial factor” in his discharge, as the reason for
 2 his discharge was false accusations and violation of the CCPT Personnel
 3 Handbook. (See D-SOFs 8-10.)
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 6 No genuine issue of material fact exists establishing a *prima facie* case of
 7 retaliation. (See D-SOFs 8-10.) Thus, Defendants are entitled to dismissal as a
 8 matter of law. *Lodis*, 192 Wn. App. at 50; *Total Sys. Servs.*, 221 F.3d at 1174.
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11 **C. Termination for Fabricating an Internal Complaint and Violating**
 12 **Policy Constitutes a Legitimate, Non-Discriminatory Motive.**

13 Assuming *arguendo* there is a *prima facie* retaliation claim, there is no
 14 genuine issue of material fact challenging that Mr. Goodell was discharged for
 15 a legitimate, non-discriminatory reason. (D-SOFs 6-11.) “Once an employee
 16 has established a *prima facie* case of retaliation, the burden shifts to the
 17 employer to advance a legitimate, non-discriminatory reason for discharging
 18 the employee.” *Purcell*, 44 F. Supp. 3d at 1060. For summary judgment, “the
 19 employer only has a burden of production, not persuasion, and does not need to
 20 persuade the court that it was actually motivated by the nondiscriminatory
 21 reasons.” *Mackey*, 12 Wn. App. 2d at 580-81 (underlining added).
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29 Violation of an employer policy constitutes legitimate, nondiscriminatory
 30 grounds for termination. *Mackey*, 12 Wn. App. at 580 (“Home Depot
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1 presented evidence that it had a legitimate, nondiscriminatory reason for
2 terminating Mackey: her violation of company discount policies.”).
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4 Additionally, termination based upon the employer’s belief that the employee
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6 lied during an internal investigation constitutes a legitimate, nondiscriminatory
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8 reason. *See Total Sys. Servs.*, 221 F.3d at 1176 (“Defendant offered a
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10 legitimate nondiscriminatory reason for Warrant’s termination: Defendant
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12 concluded that she had lied in an internal investigation.”); *accord Richey v.*
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14 *City of Indep.*, 540 F.3d 779, 784 (8th Cir. 2008) (“An employee who engaged
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16 in protected activity is not insulated from adverse action for violating
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18 workplace rules, and an employer’s belief that the employee committed
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20 misconduct is a legitimate, non-discriminatory reason for adverse action.”).

21 In the event the employer meets its burden of production, the burden
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23 shifts to the employee to “produce sufficient evidence” to create a genuine
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25 issue of material fact that the “adverse employment action was pretextual.”
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27 *Mackey*, 12 Wn. App. 2d at 581. However, if the termination “was based on
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29 actual evidence derived from the investigation,” an employee cannot establish
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31 pretext by challenging the results of the investigation. *See id.* at 582. In the
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same vein, “[a]n employee’s assertion of good performance to contradict the

1 employer's assertion of poor performance does not give rise to a reasonable
 2 inference of discrimination." *Id.* (internal quotations omitted).
 3

4 Here, no genuine issue of material fact exists that Mr. Goodell was
 5 terminated for fabricating a claim of discrimination, lying during an
 6 investigation, and violating CCPT Personnel Policies. (*See* D-SOFs 6-11.) As
 7 expressly stated in the Termination Letter, "CCPT takes allegations of sexual
 8 harassment and harassment seriously, and cannot tolerate false allegations such
 9 as the ones [Mr. Goodell] made regarding Mr. Haney's alleged comments on
 10 October 30, 2019." (D-SOF 11.) Further, the Termination Letter expressly
 11 references the CCPT Personnel Handbook as a reason for termination, noting
 12 that it "prohibits retaliation against 'any person who, in good faith,' reports
 13 sexual harassment and/or harassment." (D-SOF 9.) Moreover, Defendants
 14 detailed all aspects of the investigation into Mr. Goodell's internal complaint
 15 and the reasons for the conclusion that Mr. Goodell fabricated the complaint.
 16 (D-SOFs 8-9.) Although a grievance procedure was available by CCPT, Mr.
 17 Goodell failed to avail himself of the procedure. (D-SOF 12.)
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28 Defendants have met their burden of producing a legitimate,
 29 nondiscriminatory reason for purposes of the *McDonnell Douglas* burden-
 30 shifting analysis. (*See* D-SOFs 6-11.) Further, based upon the undisputed
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1 Termination Letter, Mr. Goodell is unable to establish pretext as a matter of
 2 law. *See Mackey*, 12 Wn. App. 2d at 581. As such, summary judgment in
 3 favor of Defendants is warranted as a matter of law. *See id.*
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 6 **D. Certification to the Washington Supreme Court is Not**
 7 **Warranted.**

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 9 In the alternative, Mr. Goodell argues that certification to the Supreme
 10 Court of Washington may be appropriate for the WLAD retaliation claim. (*See*
 11 ECF No. 38 at 11.) Certification is warranted “[w]hen in the opinion of any
 12 federal court before whom a procedure is pending, it is necessary to ascertain
 13 the local law of this state in order to dispose of such proceeding and the local
 14 law has not been clearly determined.” RCW 2.60.020 (underlining added);
 15
 16 *accord* RAP 16.16. First, certification is not necessary to decide this issue
 17 based upon the plain language of RCW 49.60.210(1) and as Washington law is
 18 settled that a “opposition clause” WLAD retaliation case requires a “reasonable
 19 belief” in the veracity of the discrimination. *See supra*. Second, even though
 20 Washington has not expressly applied the “opposition clause” in the context of
 21 fabrication or dishonesty in an internal employer investigation, this Court may
 22 look towards federal authority when deciding the issue. *Id.* As indicated
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1 above, federal law is clear that an employee may be terminated for fabricating
 2 a claim of discrimination during an internal employment investigation. *Id.*
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4 **E. Dismissal of Plaintiff's Whistleblower Retaliation Claim is**
 5 **Warranted as a Matter of Law.**

6
 7 Mr. Goodell likewise brings a whistleblower retaliation claim pursuant to
 8 RCW 49.60.210(2). (See ECF No. 37 at 22-23.) Pursuant to RCW
 9 49.60.210(2), “[i]t is an unfair practice for a government agency or government
 10 manager or supervisor to retaliate against a whistleblower as defined in chapter
 11 42.40 RCW.” The pertinent definition in Chapter 42.40 RCW, Washington’s
 12 State Employee Whistleblower Protection Act, of a “whistleblower” is “[a]n
 13 employee who in good faith reports alleged improper governmental action to
 14 the auditor or other public official.” RCW 42.40.020(10)(a)(i). However,
 15 Chapter 42.40 RCW only applies to State employees and not municipal
 16 employees. See RCW 42.40.020(2) (“‘Employee’ means any individual
 17 employed or holding office in any department or agency of state
 18 government.”); *Wilson v. City of Monroe*, 88 Wn. App. 113, 122, 943 P.2d
 19 1134 (1997) (“Because Wilson was not a state employee, he is not entitled to
 20 the remedies provided by [Chapter 42.40 RCW]”).
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There is no genuine dispute of material fact that both CCPT and Columbia County Transportation Authority are municipal entities. (D-SOF 14.) As such, Mr. Goodell is not a State employee subject to the protections of Chapter 42.40 RCW and RCW 49.60.210(2). (*See id.*) Additionally, Mr. Goodell's internal complaint was fabricated, not made in good faith, and his termination was therefore for a legitimate, nondiscriminatory reason. *See Mackey*, 12 Wn. App. 2d at 581-82. As such, Plaintiff's WLAD whistleblower retaliation claim must be dismissed as a matter of law. *See* RCW 49.60.210(2).

CONCLUSION

For the reasons indicated above, Defendants respectfully request that this Court deny Plaintiff's Motion for Partial Summary Judgment and grant Defendants' Motion for Partial Summary Judgment.

RESPECTFULLY SUBMITTED this 10th day of December, 2020.

ETTER, McMAHON, LAMBERSON,
VAN WERT & ORESKOVICH, P.C.

By: /s/ Andrew M. Wagley
 Ronald A. Van Wert, WSBA #32050
 Andrew M. Wagley, WSBA # 50007
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify and declare under penalty of perjury of the laws of the United States and the State of Washington that on the 10th day of December, 2020, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF System, which will send electronic service to the following individual(s):

Andrew S. Biviano
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Signed this 10th day of December, 2020 in Spokane, WA.

By: /s/ Andrew M. Wagley
Andrew M. Wagley